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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,977	11/09/2001	David A. Nicholas	1273 CIP CON FWC CON III	1065
7590	10/01/2004		EXAMINER	
United States Surgical, a division of TYCO HEALTHCARE GROUP LP 150 Glover Avenue Norwalk, CT 06856			WEBB, SARAH K	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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10/037,977

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## Notice of Non-Compliant Amendment (37 CFR 1.121)

The amendment document filed on 8/30/04 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121. In order for the amendment document to be compliant, correction of the following item(s) is required. Only the corrected section of the non-compliant amendment document must be resubmitted (in its entirety), e.g., the entire "Amendments to the claims" section of applicant's amendment document must be re-submitted. 37 CFR 1.121(h).

THE FOLLOWING CHECKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

1. Amendments to the specification:  
 A. Amended paragraph(s) do not include markings.  
 B. New paragraph(s) should not be underlined.  
 C. Other \_\_\_\_\_
2. Abstract:  
 A. Not presented on a separate sheet. 37 CFR 1.72.  
 B. Other \_\_\_\_\_
3. Amendments to the drawings: \_\_\_\_\_
4. Amendments to the claims:  
 A. A complete listing of all of the claims is not present.  
 B. The listing of claims does not include the text of all pending claims (including withdrawn claims)  
 C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following 7 status identifiers: (Original), (Currently amended), (Cancelled), (Withdrawn), (Previously presented), (New) and (Not entered).  
 D. The claims of this amendment paper have not been presented in ascending numerical order.  
 E. Other: Claims 1-45 are missing and have not been given status identifiers.

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP Sec. 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/preonnotice/officenlyer.pdf>.

If the non-compliant amendment is a **PRELIMINARY AMENDMENT**, applicant is given ONE MONTH from the mail date of this letter to supply the corrected section which complies with 37 CFR 1.121. Failure to comply with 37 CFR 1.121 will result in non-entry of the preliminary amendment and examination on the merits will commence without consideration of the proposed changes in the preliminary amendment(s). This notice is not an action under 35 U.S.C. 132, and this **ONE MONTH** time limit is not extendable.

If the non-compliant amendment is a reply to a **NON-FINAL OFFICE ACTION** (including a submission for an RCE), and since the amendment appears to be a *bona fide* attempt to be a reply (37 CFR 1.135(c)), applicant is given a TIME PERIOD of ONE MONTH from the mailing of this notice within which to re-submit the corrected section which complies with 37 CFR 1.121 in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD ARE AVAILABLE UNDER 37 CFR 1.136(a).**

If the amendment is a reply to a **FINAL REJECTION**, this form may be an attachment to an Advisory Action. **The period for response to a final rejection continues to run from the date set in the final rejection**, and is not affected by the non-compliant status of the amendment.

Legal Instruments Examiner (LIE)

Telephone No. \_\_\_\_\_

***UPDATE***  
**Revised Amendment Practice - 37 CFR 1.121**

**I. REVISED - Notice of Non-Compliant Amendment**

The Notice of Non-Compliant Amendment has been *revised to include the acceptable status identifiers*. Effective immediately, LIEs must use the revised version.

Please instruct the LIEs as follows: LIEs should review each amendment in its entirety and point out all of the reasons for noncompliance in the first Notice of Non-Compliant Amendment. If a reply to the Notice of Non-Compliant Amendment is filed and the amendment is still considered noncompliant, the LIE should first attempt to call the applicant to see if the error can be clarified before sending out another notice. If the matter cannot be resolved by the telephone call, then the LIE should do one of the following: (1) if the reason for noncompliance is a new error that was not previously pointed out in the prior Notice of Non-Compliant Amendment, then the LIE should send out another "Notice of Non-Compliant Amendment (37 CFR 1.121)" or (2) if applicant has failed to correct the same error that was previously pointed out in a prior Notice of Non-Compliant Amendment, then the LIE should have the SLIE sign the notice entitled "Failure to Acceptably Respond to Notice of Non-Compliant Amendment (37 CFR 1.121), No New Time Period for Reply" and mail the notice.

**II. NEW! - Failure to Acceptably Respond to Notice of Non-Compliant Amendment (37 CFR 1.121), No New Time Period for Reply**

The new form, "Failure to Acceptably Respond to Notice of Non-Compliant Amendment (37 CFR 1.121), No New Time Period for Reply," has been created for use when applicant *has failed to correct an error that was previously pointed out in a prior Notice of Non-Compliant Amendment*. PALM code 1380 should be used for recording this new notice in PALM.

**III. NEW! - Letter Withdrawing a Notice of Non-Compliant Amendment**

The new form, "Letter Withdrawing a Notice of Non-Compliant Amendment" has been created and may be used when a Notice of Non-Compliant Amendment was sent in error.

For any questions regarding the revised amendment practice or the use of the new forms above, please contact one of the following Office of Patent Legal Administration Senior Legal Advisors: Joni Chang at 703-308-3858, Elizabeth Dougherty at 703-306-3156, or Eugenia Jones at 703-306-5586.